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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/909,025	07/19/2001	Neil F. Schutzman	EMC-011PUS	9106

22494   7590   07/12/2005

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EXAMINER
CHEN, CHONGSHAN

ART UNIT	PAPER NUMBER
2162	

DATE MAILED: 07/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
 Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on <u>02 May 2005</u>.

2a)☒ This action is **FINAL**.   2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) <u>47-63</u> is/are pending in the application.

    4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) <u>47-63</u> is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

    a)☐ All   b)☐ Some * c)☐ None of:

      1.☐ Certified copies of the priority documents have been received.

      2.☐ Certified copies of the priority documents have been received in Application No. _____.

      3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

    * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1)☒ Notice of References Cited (PTO-892)

2)☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3)☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
    Paper No(s)/Mail Date _____.

4)☐ Interview Summary (PTO-413)
    Paper No(s)/Mail Date. _____.

5)☐ Notice of Informal Patent Application (PTO-152)

6)☐ Other: _____.

DETAILED ACTION

1.   This action is responsive to communications filed on 2 May 2005. Claims 47-63 are

pending in this office action.

Claim Objections

2.   Claim 47 is objected to because the claimed method can be implemented without using a

computer. The examiner suggests the applicant change the preamble to "A computer-

implemented method ...".

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the

basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4.   Claims 47-63 are rejected under 35 U.S.C. 102(b) as being anticipated by Gelb et al.

(hereinafter "Gelb", US Patent 5,018,060).

As per claim 1, Gelb discloses a method of creating a data storage pool, comprising:

providing information for a plurality of storage resources in response to a user query

(Gelb, col. 7, line 54 – col. 8, line 62, col. 12 – col. 16, all those routines are implemented using

SELECT, WHEN statements. These statements are user queries);

assigning at least one storage property to selected ones of the plurality of storage

resources in response to user instructions to define the data storage pool (Gelb, col. 7, line 54 –

col. 10, line 67);

receiving a logical expression to identify respective ones of the storage resources that are

available for a requested store operation based upon the storage properties assigned to the

selected ones of the storage resources (Gelb, col. 12, line 5 – col. 15, line 67, "the symbol |

indicates logic OR, && indicates a logic AND, ..."); and

allocating selected ones of the identified storage resources for the requested store

operation (Gelb, col. 12, line 5 – col. 15, line 67).

As per claim 48, Gelb teach all the claimed subject matters as discussed in claim 47, and

further teach the logical expression includes at least one logical operator and at least two storage

properties (Gelb, col. 12, line 5 – col. 15, line 67).

As per claim 49, Gelb teach all the claimed subject matters as discussed in claim 48, and

further teach the logical expression includes an amount of storage needed for the required store

operation (Gelb, col. 4, lines 47-48, col. 17, lines 57-59).

As per claim 50, Gelb teach all the claimed subject matters as discussed in claim 47, and

further teach receiving a new property as part of the logical expression (Gelb, col. 7, line 54 –

col. 8, line 62).

As per claim 51, Gelb teach all the claimed subject matters as discussed in claim 47, and

further teach assigning a particular one of the at least one storage properties to particular type of

storage resource (Gelb, col. 7, line 54 – col. 8, line 62).

As per claim 52, Gelb teach all the claimed subject matters as discussed in claim 47, and further teach the plurality of storage resources includes logical volumes (Gelb, col. 17, lines 18-22).

As per claim 53, Gelb teach all the claimed subject matters as discussed in claim 47, and further teach receiving a user instruction to identify a storage resource as hand-off storage (Gelb, col. 7, line 54 – col. 8, line 62).

As per claim 54, Gelb teach all the claimed subject matters as discussed in claim 47, and further teach the user query is generated by a storage administrator (Gelb, col. 4, lines 57-58, col. 12 – col. 16).

As per claim 55, Gelb teach all the claimed subject matters as discussed in claim 47, and further teach the logical expression is generated by a database administrator (Gelb, col. 13 – 16, "/* allow data base administrators to select */").

Claims 56-63 are rejected on grounds corresponding to the reasons given above for claims 47-49 and 51.

Response to Arguments

5.   Applicant's arguments filed on 2 May 2005 have been fully considered but they are not persuasive.

6.   As per applicant's arguments regarding Gelb does not teach providing information for a plurality of storage resources in response to *a user query* have been considered but are not persuasive.   Gelb teaches a routines to select a data class, a routine to select a storage class, a routine to select management class, and a routine to select a storage group (Gelb, col. 12 – col.

16). These routines are implemented using SELECT, WHEN statements. These statements are

user queries. Gelb teaches providing information for a plurality of storage resources in response

to a user query (Gelb, col. 7, line 54 – col. 8, line 62, col. 10, lines 40-67). Therefore, the

arguments are not persuasive.

7.   As per applicant's arguments regarding Gelb does not teach assigning at least one storage

property to selected ones of the plurality of storage resources *in response to user instructions* to

define the data storage pool have been considered but are not persuasive. Gelb teaches operator

interacts with the system to set up/alter the data class, storage class, storage groups (Gelb, col. 6,

lines 8-22). These operations assign properties to the storage resources (Gelb, col. 7, line 54 –

col. 10, line 67), and the storage allocation request is based upon the storage properties assigned

to the storage resources. Therefore, the arguments are not persuasive.

8.   In response to applicant's argument that the references fail to show certain features of

applicant's invention, it is noted that the features upon which applicant relies (i.e., "abstracts the

storage pool details for a user) are not recited in the rejected claim(s). Although the claims are

interpreted in light of the specification, limitations from the specification are not read into the

claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

Conclusion

9.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time

policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within TWO

MONTHS of the mailing date of this final action and the advisory action is not mailed until after

the end of the THREE-MONTH shortened statutory period, then the shortened statutory period

will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

however, will the statutory period for reply expire later than SIX MONTHS from the mailing

date of this final action.

Contact Information

Any inquiry concerning this communication or earlier communications from the

examiner should be directed to Chongshan Chen whose telephone number is (571) 272-4031.

The examiner can normally be reached on Monday - Friday (8:00 am - 4:30 pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's

supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the

organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent

Application Information Retrieval (PAIR) system. Status information for published applications

may be obtained from either Private PAIR or Public PAIR. Status information for unpublished

applications is available through Private PAIR only. For more information about the PAIR

system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR

system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Chongshan Chen
July 6, 2005

JEAN M. CORRIELUS
PRIMARY EXAMINER